

Blake P. Loebs (SBN: 145790)
bloeb@meysnave.com
David Mehretu (SBN: 269398)
dmehretu@meysnave.com
Robert S. Moutrie (SBN: 295250)
rmoutrie@meysnave.com
MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12th Street, Suite 1500
Oakland, California 94607
Telephone: (510) 808-2000
Facsimile: (510) 444-1108

Attorneys for Defendants
CITY OF OAKLAND; ALLAHNO HUGHES;
JONATHAN CAIRO; JOSHUA BARNARD;
SEAN WHENT

Noel Edlin (SBN: 107796)
nedlin@behblaw.com
Andre R. Hill (SBN: 143007)
ahill@behblaw.com
Bassi, Edlin, Huie & Blum LLP
500 Washington Street, Suite 700
San Francisco, CA 94111
Telephone: (415) 397-9006
Facsimile: (415) 397-1339

Attorneys for Defendant
JOSEPH TURNER

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

T.D.P., a minor through her mother and Next
Friend, Andrea Dupree, individually and as
successor in interest for Richard Hester
Perkins, Jr. Deceased,

Plaintiff,

v.

CITY OF OAKLAND, a public entity, CITY
OF OAKLAND POLICE CHIEF SEAN
WHENT in his individual and official
capacities, SERGEANT JOSEPH TURNER,
OFFICERS JONATHAN CAIRO, JOSHUA
BARNARD, ALLAHNO HUGHES, and
DOES 1-10, Jointly and Severally,

Defendants.

Case No. 3:16-CV-04132-LB
[Related to Case No. 3:16-CV-04324-LB]

**STIPULATION AND [PROPOSED]
ORDER TO SUPPLEMENT THE
EVIDENCE IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Date: December 14, 2018
Time: 9:30 a.m.
Crtrm: B, 15th Floor
Judge: Hon. Laurel D. Beeler

Trial Date: None

3:16-CV-04132-LB/3:16-CV-04324-LB

STIPULATION AND PROPOSED ORDER TO SUPPLEMENT THE EVIDENCE IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

1 RICHARD PERKINS, III, son of RICHARD
2 PERKINS, JR., deceased, and ADA
PERKINS-HENDERSON,

3 Plaintiffs,

4 v.

5 CITY OF OAKLAND, a public entity,
6 SERGEANT JOSEPH TURNER, OFFICERS
JONATHAN CAIRO, JOSHUA BARNARD,
7 ALLAHNO HUGHES, and DOES 1-10,
Jointly and Severally,

8 Defendants.

Case No. 3:16-CV-04324-LB
[Related to Case No. 3:16-CV-04132-LB]

STIPULATION

The Parties in the above-entitled actions, by and through their respective counsel of record, hereby stipulate and agree as follows:

1. Defendants' Motion for Summary Judgment (Dkt. 75 (*Perkins*) & 94 (*T.D.P.*) is currently pending before the Court, with the hearing for the motion currently set for December 14, 2018. (Dkt. 101 (*Perkins*) & 139 (*TDP*)).

2. In support of their Motion for Summary Judgment, Defendants submitted, as Exhibit C to the accompanying Declaration of Defendant Officer Hughes, two photographs of the .177 caliber pellet gun in Mr. Perkins' possession at the time of the shooting. (See Dkt. 75, p.3 and note 6, Dkt. 75-27 (Ex. C.) (*Perkins*), and Dkt. 94, p.3 and note 6; Dkt. 94-27 (Ex. C.) (*T.D.P.*)).

3. In their opposition briefs, Plaintiffs referred to this gun as a "toy," "fake," and "not real." (See, e.g., Dkt. 91 (*Perkins*) 1:8, 13:1, 4:1, 17:4; and Dkt. 110 (*T.D.P.*) 7:13, 11:5, 12:16, 13:18 and 19:18, 2:7 2:13, 3:21, 11:23.)

4. The Parties agree that Defendants may supplement the evidentiary record before the Court on Defendants' Motion for Summary Judgment with the actual pellet gun pictured in Exhibit C to the Hughes Declaration as a piece of real/physical evidence.

5. Defendants have represented that the pellet gun pictured in Exhibit C to the Hughes Declaration (Dkt. 94-27 (Ex. C)) remains within the custody of the Oakland Police Department and will not be in the custody of counsel for Defendants at any point. If the Court allows the record to be supplemented with the pellet gun as requested in this stipulation, Defendants shall arrange for the unloaded and inoperable pellet gun to be brought to the Court by an officer with the Oakland Police Department who will maintain custody of the pellet gun until it has been filed with the Court.

6. Accordingly, pursuant to Local Rule 7-3(d), the Parties hereby stipulate that Defendants shall be allowed to supplement the factual record on Defendants' Motion for Summary Judgment with the actual pellet gun pictured in Exhibit C to the Hughes Declaration (Dkt. 94-27 (Ex. C)), as a piece of real/physical evidence, and shall be entitled to have the pellet gun available

1 at the hearing on Defendants' Motion for Summary Judgment.

2 DATED: November 28, 2018

Respectfully submitted,

3 MEYERS, NAVE, RIBACK, SILVER & WILSON

4
5 By: /S/ David Mehretu

6 David Mehretu

7 Attorneys for Defendants CITY OF OAKLAND;
8 ALLAHNO HUGHES; JONATHAN CAIRO;
9 JOSHUA BARNARD; SEAN WHENT

10 DATED: November 28, 2018

BASSI, EDLIN, HUIE & BLUM LLP

11 By: /S/ Andre R. Hill

12 Andre R. Hill

13 Attorneys for Defendant JOSEPH TURNER

14 DATED: November 28, 2018

HADDAD & SHERWIN LLP

15
16 By: /S/ Maya Sorensen

17 Maya Sorensen

18 Attorneys for Plaintiff
19 T.D.P.

20 DATED: November 28, 2018

SIEGEL, YEE & BRUNNER

21 By: /S/ EmilyRose Johns

22 EmilyRose Johns

23 Attorneys for Plaintiffs
24 RICHARD PERKINS, III and ADA PERKINS-
25 HENDERSON

26 **Attestation of Concurrence In The Filing (Local Rule 5-1(i)(3))**

27 The filer, David Mehretu, attests that all other signatories listed on whose behalf this filing
28 is submitted concur in the filing's content and have authorized the filing.

[PROPOSED] ORDER

IT IS HEREBY ORDERED that, pursuant to the stipulation of the Parties, which is recited above, and good cause in support thereof:

1. Pursuant to Local Rules 7-3(d), Defendants shall be allowed to supplement the factual record on Defendants' Motion for Summary Judgment with the actual gun in Mr. Perkins's possession at the time of the shooting, pictured in Exhibit C to the Hughes Declaration (Dkt. 94-27 (Ex. C)).

2. Defendants shall file the gun as evidence with the Court at the hearing on Defendants' Motion for Summary Judgment, and the gun shall remain in the custody of the Clerk pursuant to Local Rule 79-3.

3. Pursuant to Local Rule 77-6(b), prior to the hearing, Defendants shall arrange to furnish the gun to the United States Marshall to inspect it to ensure that it is inoperable.

IT IS SO ORDERED.

Dated: _____, 2018

Hon. Laurel D. Beeler
DISTRICT COURT MAGISTRATE JUDGE

3082365